

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs April 3, 2003

IN RE: M.A., A.A., and J.V.

**Appeal from the Juvenile Court for Cheatham County
No. 2000-926 Phillip Maxey, Judge**

No. M2002-02701-COA-R3-JV - Filed October 1, 2003

This appeal involves a petition filed by the Department of Children's Services to terminate the parental rights of Mother to her three minor children. The juvenile court granted the petition, and Mother appeals the decision, arguing there was not clear and convincing evidence to support termination. Because we find the petition was properly granted, we affirm the juvenile court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court
Affirmed and Remanded**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., and WILLIAM B. CAIN, JJ., joined.

Martha Brooke Perry, Ashland City, Tennessee, for the appellant, S.V.

Paul G. Summers, Attorney General and Reporter; Pamela A. Hayden-Wood, Assistant Attorney General, for the appellee, State of Tennessee Department of Children's Services.

OPINION

At issue is the juvenile court's grant of a petition to terminate the parental rights of Mother in regard to her three (3) minor children, M.A., a daughter born June 15, 1986; A.A., a daughter born November 19, 1990; and J.V., a son born August 2, 1993.¹

¹The three minor children have different fathers. Both M.A. and J. V.'s fathers are deceased. As for A.A.'s father, the juvenile court found that C.V., who was named on her birth certificate as her father, had taken no steps to legitimate her, paid no expenses for her prenatal care or birth, and paid no support for her and therefore found that C.V. had abandoned A.A. and terminated his parental rights by default on October 22, 2002, after he failed to appear or respond to the petition. C.V. has not appealed the juvenile court's order.

M.A., A.A., and J.V. came into the custody of the Department of Children's Services ("DCS") on November 22, 2000 following allegations that M.A. had been sexually abused by Mother's boyfriend, ("D.G."), who lived in the home.² Permanency plans were developed for the children. The plans identified, as a barrier to permanency, that M.A. had been sexually abused by Mother's boyfriend, that Mother failed to protect her daughter, and that Mother refused to believe her.³

Following a hearing in juvenile court on March 8, 2001, the court issued an order of adjudication and disposition on March 22, 2001, which found by clear and convincing evidence that M.A., A.A., and J.V. were dependent and neglected:⁴

The Court finds that the testimony of [M.A.] and of her therapist, Dr. Janie Berryman, was extremely compelling. **The Court has no doubt that [M.A.] was sexually abused by the mother's boyfriend, [D.G.],** and thus, is a dependent and neglected child. The Court further finds that the mother failed to protect her child from the abuse even after her daughter, [M.A.], told her about it. The mother obviously still does not believe her daughter, and as long as the mother denies that her child was abused, the risk for all of the children as to abuse still exists. The Court is concerned for the safety of the other children in the home, [A.A.] and [J.V.], and therefore finds that they are dependent and neglected children as well. The Court finds that the mother still has not severed her ties with the perpetrator of the abuse, [D.G.], and the Court advised the mother that if she does not do so, she may be facing a termination of her parental rights. The mother has only recently begun to address the issues that brought the children into care and much more work is required on her part before they can be reunified with her.

The Court was is likewise concerned that the children have not been able to visit regularly with each other and with their mother. The court therefore orders the Department to work this case aggressively to insure that if reunification is possible, it occurs quickly and likewise, if the mother did not start to work her plan and believe

²According to the affidavit and petition for temporary custody, D.G. had inappropriately touched M.A., made inappropriate comments to her, and attempted to expose himself to her. The affidavit and petition also stated that the youngest child, J.V. witnessed the abuse, that A.A. was at risk of being abused, and that Mother was not protective of the children and did not believe that the abuse had occurred.

³The plans called for individual counseling to address this issue. The plans also required Mother to complete a psychological assessment and follow recommendations, to successfully participate in a sexual abuse non-offending parent group, and to provide a safe environment for her children. The plans required that Mother's therapeutic needs be identified and that she assume responsibility for her role in the children's abuse. M.A.'s and A.A.'s plans also called for them to attend counseling to process and address the impact of the sexual abuse and to heal emotionally. Mother, by her signature, agreed that she participated in the development of these permanency plans, that the plans were discussed with her, and that she agreed with the plans. All three plans were approved by the court on December 12, 2000.

⁴On January 10, 2000, the court had appointed a guardian *ad litem* for the children.

her daughter after a reasonable period of time, then the State shall consider filing a termination of parental rights petition against the mother. . . .(emphasis added).

On September 4, 2001, the guardian *ad litem* filed a motion for an order enjoining and restraining D.G. from coming around, contacting, or attempting to contact the children at any time, place, or for any purpose. A.A. submitted an affidavit stating that she had seen D.G. drive by her foster home twice while she was playing outside, that she was afraid that he would come to her foster home and try to hurt her, and that she had nightmares about him. Dr. Janie Berryman, M.A. and A.A.'s treating psychologist, submitted an affidavit stating that A.A. told her that D.G. had physically abused her, that she had seen D.G. near her foster home, that she was afraid of him and had nightmares that he was going to kidnap her. J.V. submitted an affidavit stating that he had also seen D.G. drive by his foster home and that he was now afraid to go outside because D.G. had hurt him in the past. Janet Weismark, J.V.'s treating social worker, filed an affidavit stating that J.V. had told her many times that D.G. physically abused him, that J.V. was afraid of him, and that J.V. told her he saw D.G. drive by his foster home. Both Dr. Berryman and Ms. Weisman opined that it would be harmful to the children to see or have any contact with D.G. The court issued a restraining order against D.G. on September 11, 2001.

On October 2, 2001, a hearing was held on Mother's motion for return of her children to her physical custody or, in the alternative, for unsupervised visits, including overnight visitation with her children. On December 3, 2001, the court entered an agreed order granting Mother limited unsupervised visits with M.A. and A.A., and an additional supervised visit each week with J.V. The court also ordered Mother to participate in mother/daughter therapy with M.A. and A.A. to the extent that Dr. Berryman determined was in their best interest.

A second permanency planning hearing was held on November 13, 2001, in the juvenile court and the court found Mother was still not in compliance with the permanency plan due to her continued refusal to believe that her children had been abused. The court found that counseling should continue, as Mother needed to show that she would protect her children from D.G. The court ordered that the children remain in foster care pending further orders. The revised permanency plans were ratified by the court on November 13, 2001, and once again identified the same obstacles to returning the children to their mother.⁵

By February 22, 2002, the foster care review board conducted another periodic review and concluded that the permanency goal of having the children return home was no longer appropriate and recommended adoption as an additional alternative goal. The quarterly progress report included the following comments:

Mother's [b]oyfriend allegedly sexually abused [M.A.] and physically abused [J.V].
All three children are in counseling and [J.V.] is seeing a [p]sychiatrist as well. [J.V.]

⁵Once again Mother signed all three plans, agreeing that she participated in the development of the permanency plan, that the plan was discussed with her, and that she agreed with the plan.

receives weekly individual therapy to address issues of abuse and neglect. [M.A.] and [A.A.] see Dr. Berryman twice a month. [J.V.] is having nightmares at home about [D.G.] and these dreams really upset [J.V.] and he wakes up from them terrified. He is discussing this in therapy at the present time.

Mother has told [the DCS case manager] that she still has contact with [D.G.], her past boyfriend, and she wishes him to return home one day. She still does not believe her children and does not believe any abuse ever occurred from the boyfriend. Mother is in counseling.

In light of the foster care review board's recommendation, DCS filed a petition for termination of parental rights on May 11, 2002. As grounds for termination, the petition stated that the children had been removed from Mother's custody over six months prior to the filing of the petition, the conditions which caused the removal, or other conditions, persisted that would likely cause the children further abuse or neglect, it was unlikely that conditions would be remedied in the near future, and continuation of the relationship would diminish the children's chances for integration into a permanent home due to their age.⁶ The petition further stated that Mother had failed to comply with the statements of responsibilities in the permanency plans. The petition stated that it was in the best interest of the children that parental rights be terminated and that DCS be awarded custody with the right to place the children for adoption.

Prior to the termination hearing, the guardian *ad litem* filed a motion to modify visitation in June 2002. The motion stated that the quality of Mother's unsupervised visits with M.A. and A.A. had deteriorated, that the girls were reluctant to visit with Mother due to her persistent resistance to leave D.G. and her disbelief of the allegations against him, and that, based on the statements of the children and the reports of their therapist, the visits had become emotionally painful and unhealthy for the children. The juvenile court granted the motion and found that the unsupervised visits had progressively deteriorated and become emotionally painful and unhealthy for the children and ordered that Mother's visits with her children be supervised.

In September 2002, DCS filed a motion to ratify a third set of permanency plans for the children, stating that the plans were compiled at a staffing held on June 19, 2002, but that Mother did not agree with them. In this third set of permanency plans, the goal had been changed to include adoption. The reason for the change in goal was that "the mother can not provide protection in the

⁶DCS invited D.G. to attend and participate in the staffing, and he did. During the staffing, D.G. stated that he loved Mother, that he wanted the children to return home, and that he was going to try to get his family back together. During the staffing and in Mother's presence, D.G. also admitted that he had hit M.A. on her rear and that he had talked about her breasts. He also admitted to verbally abusing the children, but denied all else. Both Mother and D.G. gave DCS and everyone at the staffing indication that they were either together or that they wanted to be together.

home. Also, she has a strong disbelief in the occurrence that led them into custody.” The plans noted that J.V.’s foster parents were interested in adopting all three children.⁷

I. Evidence at Hearing

At trial, on September 27, 2002, the juvenile court heard the following testimony.

Jennifer Ballard, the children’s current DCS case manager testified that she had contact with Mother when she did a home visit every three months and also saw her once or twice a week when she supervised Mother’s visits with her children. During the time Ms. Ballard worked on this case, there was no indication that Mother ever began to believe M.A. suffered abuse or that Mother had put D.G. out of her life. The only responsibility Mother accepted for completing the plan was to work and to attend individual therapy and the non-offending parent program. However, Ms. Ballard testified, the entire plan was designed with only two requirements for Mother: (1) believe M.A.; and (2) maintain a safe environment for her children.

Ms. Ballard’s last home visit with Mother was within a month before the trial. Mother had recently moved to Pegasus to be closer to her place of employment. Mother’s home was located a mile or less from D.G.’s last known address. Mother gave Ms. Ballard a tour of the house. She showed Ms. Ballard what she called “our” bedroom, the bedroom she had set up for M.A. and A.A., and what was to be J.V.’s bedroom. Mother said D.G.’s son was temporarily living with her. Ms. Ballard was concerned that this meant that Mother had more contact with D.G. than she was admitting to DCS.

Next to testify was Dr. Janie Berryman, M.A. and A.A.’s therapist.⁸ She met with M.A. for individual therapy about 32 times over a two-year period and also had individual sessions with A.A., joint sessions with M.A. and A.A., and sessions with all three children. M.A. consistently reported that she was abused by D.G., and Dr. Berryman was convinced that M.A. suffered the abuse she reported. M.A. also reported that D.G. had hit A.A. and J.V. and that she had heard him hit her mother. The other daughter, A.A., also for two years consistently, without recanting, described physical abuse that she, her brother, and her mother suffered at the hands of D.G.

Throughout her therapy with M.A., Dr. Berryman consistently addressed whether Mother believed M.A. Although M.A. held out hope that her mother would eventually believe her, it never happened. As a result, M.A. was feeling guilty that her family was not together. Dr. Berryman testified that this was typical with victims and that she thought the trauma of her mother not believing her was worse for M.A. than the trauma of what D.G. did.

⁷According to J.V.’s case manager Kim Dabney, he had a great deal of structure in his present foster home, his grades had improved, and he did not have as many behavior problems.

⁸She also saw J.V. and Mother in several family sessions with the girls.

M.A. tried to confront her mother a few times on visitation, but Mother would not speak about it or acknowledge that any abuse had occurred. Dr. Berryman testified that Mother's failure to acknowledge the abuse created a risk that it could recur, particularly if the abuser remained part of the family, and Mother would do nothing to stop it from happening because she did not believe there was anything to worry about. In October 2001, Dr. Berryman held a family therapy session with M.A. and Mother to allow M.A. to confront her mother and share with her what had occurred. The session did not go well.

Afterwards, it was obvious to Dr. Berryman that Mother was having problems believing what occurred, so Dr. Berryman put some information together for her and planned a session with her and her therapist to try to answer her questions. The next month, Dr. Berryman testified, she met with Mother and her therapist at the Rape and Sex Abuse Center. Dr. Berryman showed Mother DCS documentation that J.V., not M.A., had actually disclosed the abuse to school officials, but Mother did not believe it. Mother's concern was whether Dr. Berryman had worked with convicted sex offenders who had been falsely accused. Mother said that M.A. was angry and just making up stuff and that M.A.'s boyfriend had actually sexually assaulted her, not D.G.. According to Dr. Berryman, Mother had an answer for everything and would not accept anything negative that was said about D.G.. Dr. Berryman also confronted Mother with some things A.A. had said regarding physical abuse, but Mother did not believe that either, and explained M.A. was putting that in the younger children's heads. Dr. Berryman said there was nothing more she could do after that; she could not effect change with someone who did not acknowledge even the possibility of abuse. She saw nothing to be gained from another family therapy session. Mother never contacted Dr. Berryman about another family counseling session. Mother's therapist also terminated her therapy because they had nothing more they could work on if Mother did not believe the abuse had occurred.

Dr. Berryman also testified concerning a June 2002 staffing she attended where M.A. confronted her mother about wearing an engagement ring that D.G. had previously given Mother. M.A. wanted to know whether D.G. was still in her life. Mother's response was that she was going to do what she wanted to do and they were not going to deal with the issue there, but in counseling. Mother also stated that the truth would come out at the hearing. She did not apologize or express any regret to M.A. M.A. was tearful and begged her mother to reconsider and believe them. Dr. Berryman described taking M.A. aside as she was sobbing: "Why won't she believe us? Why won't she believe us? What is so great about him that she won't believe us?"

Dr. Berryman stated that in her professional opinion going back home was not an option for the children. She explained that if M.A. was returned to her mother, whether D.G. were in the home or not, it would be a hostile situation because Mother blamed M.A. for everything that had happened and held her responsible for lying and making things up and brainwashing the younger children. If the situation at home had not changed, A.A. would be a "sitting duck" for further problems. Dr. Berryman believed the same was true for J.V. Dr. Berryman saw no acceptance of the situation and believed that "if you don't believe there is a problem, you don't work on it and the problem has not been addressed to prevent its recurrence." Mother could not protect her children if she did not believe them. Even if there were a sincere belief that the abuse occurred and a guarantee that D.G.

would not be around, Dr. Berryman was unsure what it would take to get past the anger and trauma the children experienced, before they could return to their mother.

Dr. Berryman explained that M.A. and A.A. both felt very hurt, betrayed, and angry that their mother did not believe that any of this occurred and that she has chosen D.G. over her children. They believed that D.G. was still in their mother's life and that if they returned home, he would also be part of the family. They also believed that if they went back home, their mother would move them away and then have D.G. join them later. A.A. was afraid of D.G. and afraid of "payback."

Dr. Berryman testified that she had discussed termination of parental rights with both M.A. and A.A. Both girls were saddened that it had come to that but were resigned that it would happen. M.A. wanted to move on toward some more independent living and to get on with her life. A.A. was very stoic, she did not talk about her feelings or show her emotions in an ongoing, angry way, but she began having seizures last year that the neurologist felt were anxiety-based, probably related to emotions. A.A. seemed to be holding out for a "last minute miracle" that something would change, but during the week before the trial resigned herself to the fact that nothing had changed and gave M.A. a letter to give her mother at the trial. In the letter, A.A. asked her mother why she did not believe them, accused her of lying and caring more for D.G. than her children. Dr. Berryman read the letter into the record at trial.

The last witness to testify was Mother. She explained that she understood the permanency plan requirements; that she had taken responsibility for her role in the children's removal from the home; that she no longer was involved with D.G.; and that she would not bring him back into the house or allow him to have any contact with her children.

Mother testified that her children were removed from her home "because of accusations" and "based on the statement of those accusation, I can't sit here and say that they are true." Mother testified that she did not believe M.A.'s allegations because she had had a lot of problems with M.A. lying, manipulating her, and wanting to control her before M.A. was placed in state custody. She explained that M.A. never liked D.G. Mother could not believe M.A. because there were a lot of conflicts in her statement. She felt she would be committing perjury if she testified that she believed M.A. She noted that D.G. had not been charged with any crime, which confirmed her feeling that it did not happen.

Mother testified that when M.A. first made the allegation, she should have called DCS, but she tried to take matters into her own hands instead. She first learned of the allegations from M.A. on August 16, 2000, but did not call DCS. D.G. moved out of the house the next day. On August 21, 2000, Mother called Southridge Psychological Services and "explained to them what was going on," and tried to get M.A. help.

With respect to her other children, Mother was unaware of any problems. A.A. and J.V. never told her about any abuse. Mother testified that she knew there was no physical abuse in her home, that if there had been, she would not be with D.G.

Mother testified that, if, after her children were returned to her, they made allegations of abuse, she would call DCS, whether the allegations were true or not. She understood that she would have to take responsibility for seeking outside help regardless of whether she believed it or not.

Concerning the engagement ring, Mother testified that M.A. knew the ring was special because she helped select it. It did not bother Mother that her wearing the ring upset M.A. because “it’s my body,” “nobody can tell me what I can wear, can’t wear,” and “I want her to understand where I’m coming from, and why I am wearing it. It can’t be just her way. Life is a two way street.” Indeed, Mother wore the ring to the termination hearing.

Mother testified that she loved her children and wanted them back in her home. She also testified that she was not sure whether she would continue her relationship with D.G. if there were no restrictions on her, that “it would just depend on the circumstances and things like that,” but “probably not because that never – that situation has never come about,” referring to having no restrictions. Mother said she was determined to stand up and let the court know the truth, that M.A.’s statement was false and that she was never going to change her mind about that because that would make her lie under oath.

The court entered its final order terminating Mother’s parental rights to all three children. The court found that the children had come into DCS custody because of allegations that Mother’s boyfriend had sexually abused M.A.; that the children had been found dependent and neglected; and that DCS had made reasonable efforts to assist Mother. It further found that Mother:

has made no reasonable efforts to provide a safe and suitable home and has demonstrated a lack of concern for the children to such a degree that it appears unlikely that she will be able to provide a suitable home for the children at an early date.

The court found that the children had been removed from the home for more than six months and that the conditions which led to their removal still persisted. In addition, the court found “other conditions persist which in all probability would cause the children to be subjected to further abuse and neglect and which, therefore, prevent the children’s return to the care of the mother.” The court found there was little likelihood these conditions would be remedied at an early date so that the children could be returned to Mother in the near future and that the continuation of the parent child relationship greatly diminished the children’s chances of early integration into a stable and permanent home.⁹

In addition, the court found that Mother’s “total refusal to accept or believe the allegations of abuse against her paramour” continued to place all three children at risk because it was unlikely that Mother would protect them from future abuse. The court also specifically found that Mother

⁹The court stated from the bench, “As a matter of fact, Dr. Berryman says even if they are remedied right now, it’s still going to be a year before these children can go back home.”

and D.G. had never severed their relationship and were still involved with each other, “to the point that [D.G.’s] son was living in the home with Mother.”¹⁰

The court also found that Mother had failed to substantially comply with the goals of the permanency plan in that she was not willing to address responsibilities relating to remedying the conditions that necessitated continued foster care placement, “including acknowledging that the abuse occurred and taking the necessary steps to insure that her children are protected from any future abuse from this, or any other, perpetrator.” The court also found that termination of Mother’s parental rights was in the best interest of each of the children.

II. Standard For Termination Of Parental Rights

A parent has a fundamental right to the care, custody and control of his or her child. *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212-13 (1972); *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 174-75 (Tenn. 1996); *In Re Adoption of a Female Child*, 896 S.W.2d 546, 547 (Tenn. 1995); *Nale v. Robertson*, 871 S.W.2d 674, 678 (Tenn. 1994). This right is a fundamental but not absolute right, and the state may interfere with parental rights if there is a compelling state interest. *Santosky v. Kramer*, 455 U.S. 745, 747, 102 S. Ct. 1388, 1391 (1982); *Nash-Putnam*, 921 S.W.2d at 174-75.

Terminating parental rights has the legal effect of reducing the parent to the role of a complete stranger, “severing forever all legal rights and obligations of the parent.” Tenn. Code Ann. § 36-1-113(l)(1). The United States Supreme Court has recognized the unique nature of proceedings to terminate parental rights, stating that “[f]ew consequences of judicial action are so grave as the severance of natural family ties.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S. Ct. 555, 565 (1996) (quoting *Santosky*, 455 U.S. at 787, 102 S. Ct. at 1412 (Rehnquist, J., dissenting)). As a result, “[t]he interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment.” *Id.* The constitutional protections of the parent-child relationship require certain safeguards before the relationship can be severed. *O’Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995). This most drastic interference with a parent’s rights requires “the opportunity for an individualized determination that a parent is either unfit or will cause substantial harm to his or her child before the fundamental right to the care and custody of the child can be taken away.” *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999).

¹⁰In its ruling from the bench, the court also stated:

Regarding [D.G.’s] involvement, I can’t ignore that he is – I feel he is still involved. He has been seen in the neighborhood recently. Mother has moved closer to him. His son is living in the home. [“D.G.’s] statement at the meeting in May that he wants to get his family back together. And Mother’s statement to Ms. Dabney in April that she wants to get these children back and then just get [D.G.] and – back in the home. That statement has been unrefuted and un rebutted.

Our legislature has established those situations in which the state's interest in the welfare of a child justifies interference with a parent's constitutional rights by setting forth grounds on which termination proceedings can be brought, Tenn. Code Ann. § 36-1-113(g), and parental rights may be terminated only in those statutorily defined circumstances. *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Because the decision to terminate parental rights affects fundamental constitutional rights, courts must apply a higher standard of proof when adjudicating termination cases. *Santosky*, 455 U.S. at 769, 102 S. Ct. at 1403; *In re M.W.A.*, 980 S.W.2d at 622; *O'Daniel*, 905 S.W.2d at 186. To justify the termination of parental rights, the grounds for termination must be established by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c)(1); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). "This heightened standard . . . serves to prevent the unwarranted termination or interference with the biological parents' rights to their children." *In re M.W.A.*, 980 S.W.2d at 622.

In order to be clear and convincing, evidence must eliminate any serious or substantial doubt about the correctness of the conclusions to be drawn from the evidence. *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992); *O'Daniel v. Messier*, 905 S.W.2d at 188. Such evidence should produce in the fact-finder's mind a firm belief or conviction as to the truth of the allegations sought to be established. *O'Daniel v. Messier*, 905 S.W.2d at 188; *Wiltcher v. Bradley*, 708 S.W.2d 407, 411 (Tenn. Ct. App. 1985). In contrast to the preponderance of the evidence standard, clear and convincing evidence should demonstrate that the truth of the facts asserted is "highly probable" as opposed to merely "more probable" than not. *Lettner v. Plummer*, 559 S.W.2d 785, 787 (Tenn. 1977); *Goldsmith v. Roberts*, 622 S.W.2d 438, 441 (Tenn. Ct. App. 1981); *Brandon v. Wright*, 838 S.W.2d at 536.

In re C.W.W., 37 S.W.3d 467, 474 (Tenn. Ct. App. 2000); *see also Estate of Acuff v. O'Linger*, 56 S.W.3d 527, 537 (Tenn. Ct. App. 2001). DCS had the burden to present "evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn by the evidence." *In re Valentine*, 79 S.W.3d at 539.

The existence of any one statutory ground will support termination of an individual's parental rights. *In re C.W.W.*, 37 S.W.3d at 473. In addition, if a court, applying the appropriate evidentiary standard, determines that one of the grounds exists, the court must also find, using the clear and convincing evidence standard, that termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2).

The trial court herein found that DCS had met its burden, that grounds for termination had been proved to exist, and that termination was in the best interest of the children. On appeal, Mother argues that clear and convincing evidence did not exist to justify termination on either the substantial non-compliance or the persistence of conditions grounds.

III. Proof of Grounds

One of the grounds alleged by DCS and found to exist by the court was the persistence of conditions preventing return to the home. That ground is set out in Tenn. Code Ann. § 36-1-113(g)(3)(A), and allows a trial court to terminate the parental rights if:

The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

- (i) The conditions which led to the child's removal or other conditions which in all reasonable probability would cause the child to be subjected to further abuse or neglect and which, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;
- (ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and
- (iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

The conditions that led to the children's removal from Mother's home were the sexual abuse of M.A. by Mother's boyfriend and Mother's failure to report M.A.'s accusations. The children remained in foster care because of Mother's failure to provide a safe and stable environment for the children. As the foster care placements continued, it became clear that the other two children had suffered physical and emotional abuse at the hands of D.G. All three of the children were afraid of D.G. and fearful he would remain in their lives if they returned to Mother's custody. Also during this time, the relationship between Mother and her children deteriorated because of Mother's conduct, her reaction to the allegations of abuse, and her interactions with the children.

As the statute makes clear, as long as conditions exist that "in all reasonable probability would cause the children to be subjected to further abuse or neglect and which, therefore, prevent the child's safe return to the home," it does not matter whether those conditions are the ones that led to the original removal or are "other" conditions. DCS has provided clear and convincing evidence that return of the children to Mother's home cannot occur anytime in the near future without harm to the children. The children's therapist established that going back home was not an option for these children.

Much of the argument herein has centered on whether Mother can be required to "believe" the accusations made by her children. Mother argues that compliance with DCS's insistence that she believe her children's accounts of the abuse would have required her to commit perjury at the

hearing because she simply did not believe it ever occurred because the alleged perpetrator was never criminally charged and she found inconsistencies in her daughter's accusations.

Although this court has expressed some concern about a requirement that a parent admit abuse or face termination, *see, e.g. State v. R.S.*, No. M2002-00919-COA-R3-CV, 2003 WL 22098035 (Tenn. Ct. App. Sept. 11, 2003), the situation in this case is different. There was a judicial finding that M.A. was sexually abused by Mother's boyfriend, D.G., which we must presume was supported by sufficient evidence. The order finding the children dependent and neglected that included the abuse finding was never appealed. Mother's steadfast reliance on the lack of a criminal prosecution as a reason for her disbelief ignores the effect of the finding that D.G. had committed the abuse. It had been proven to the satisfaction of the court and unappealed.

Further, this was not a situation where Mother was uninformed of her children's accusations or their feelings. She was informed of those by DCS and the therapist. Additionally, she had opportunities to interact with the children in unsupervised and supervised visits. A counseling session was set up with Mother and M.A. to allow M.A. to confront Mother and share what had occurred, under the therapist's mistaken assumption that Mother acknowledged that abuse had occurred.

Despite the judicial finding of abuse, despite the efforts to more fully inform Mother of the facts surrounding the reporting of the abuse, despite the statements and expressed fear of all her children, and despite an attempt to let Mother and M.A. work through the issues in a therapeutic setting, Mother has continued in a pattern of disregard of her children's welfare. She has adamantly refused to acknowledge even the possibility that the conduct described by her children occurred. She has essentially blamed M.A. for the family's separation, and M.A. has suffered feelings of guilt for the situation. Mother has allowed all her children to suffer trauma, emotional turmoil, and pain because of their perception that she has chosen her boyfriend, of whom they are afraid, over them.

The guardian *ad litem* eventually filed a motion to modify visitation because the quality of the unsupervised visits of the daughters had deteriorated, the girls were reluctant to visit Mother due to her persistent resistance in leaving D.G., and based on the children's statements and reports of their therapist, the visits had become emotionally painful and unhealthy for the children. The court found the unsupervised visits had progressively deteriorated and become emotionally painful and unhealthy for the children and ordered that the visits be supervised in the future. The therapist was clear that the anger, pain and trauma experienced by these children prevented their return home. The attitude Mother has displayed toward them, especially M.A., has made it impossible for the children to be in Mother's custody without continued harm to their emotional well being.

Whether or not Mother actually believes that D.G. committed the acts described by M.A. or the acts of physical violence or emotional abuse described by the other children, she could have lessened the trauma and pain suffered by her children by acknowledging their statements and their concerns about the future. Instead, she exacerbated the emotional damage to them. She has created a situation or conditions which prevent the return of her children in the near future. It is not her

belief or disbelief as to the allegations against D.G. that is the issue. Instead, it is her treatment of her children in the aftermath of those allegations.

We agree with the trial court's determinations that DCS proved the existence of grounds for termination and that such termination is in the children's best interests. Accordingly, we affirm the judgment of the trial court. Costs of this appeal are taxed to the appellant.

PATRICIA J. COTTRELL, JUDGE